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VIA ECF

January 30, 2023

Hon. Barbara Moses, U.S.M.J.
United States District Court
Southern District of New York
500 Pearl St., Room 740
New York, NY 10007

Re: Seaman et al. v. Nat'l Collegiate Student Loan Trust 2007-2 et al., 18-CV-1781
Bifulco et al. v. Nat'l Collegiate Student Loan Trust 2004-2 et al., 18-CV-7692

Dear Judge Moses:

We represent Plaintiffs in the above cases and write concerning Defendants' letter of January 27, 2023 (Dkt. No. 421 in Case No. 18-cv-1781), calling this Court's attention to *Hoffman v. Transworld Sys.*, No. 18-cv-1132, 2023 U.S. Dist. LEXIS 13790 (W.D. Wash. Jan. 26, 2023).

Hoffman does not support denying certification in the Second Circuit as it did not address the Rule 23 precedent that controls here, *Sykes v. Mel Harris & Assocs.*, 780 F.3d 70 (2d Cir. 2015). As this Court has said, *Sykes* is "very close to all fours on point" with Plaintiffs' certification motion. (Tr. of May 5, 2022 Ct. Conf., at 77:13–15).

Sykes upheld certification where collectors followed a policy of non-review. *Id.* at 85–86, 96. In this Circuit, class-wide "[l]iability under the FDCPA can be established irrespective of whether the presumed debtor owes the debt in question." *Id.* at 83. Plaintiffs here, as in *Sykes*, seek certification based on Defendants' uniform written policies that forbade review of documents in every collection action.¹

In contrast, the plaintiffs in *Hoffman* did not offer evidence of uniform conduct, such as the no-review policies offered by Plaintiffs here and in *Sykes*. *See* 780 F.3d. at 85–86, 96. *Hoffman*'s rejected theory of commonality was instead bootstrapped on a chain-of-title defect, an argument not relied upon by Plaintiffs here in their motion for class certification. *See* 2023 U.S. Dist. LEXIS 13790, at *17–24.

Hoffman's certification analysis contradicts *Sykes*, as it focuses on whether the debt collector can today validate a specific debt, where *Sykes* focuses on the defendants' failure to do so at the time of the defendants' violations. *Compare Hoffman*, 2023 U.S. Dist. LEXIS 13790, at *17–24, *with Sykes*, 780 F.3d. at 83, 96. Plaintiffs have sufficiently demonstrated that they are entitled to class certification based on Defendants' uniform, written policies requiring the violations of law complained of here.

/s/ Gregory A. Frank

¹ Defendants' policies prohibited their attorneys and affiants from checking chain of title, or terms of loans. *E.g.*, Pls.' Br. in Supp. Class Cert., at 4–5, 13 (Dkt. No. 314 in Case No. 18-cv-1781); Pls.' Reply in Supp. Class Cert., at 1–5 (Dkt. No. 335 in Case No. 18-cv-1781).